

PRENEED MERCHANDISE AND SERVICES TRUST AGREEMENT

THIS AGREEMENT made and entered into this the ____ day of _____, 20____ by and between _____ (hereinafter called _____), a Tennessee Corporation for profit, with principal office in _____ County, Tennessee, and the _____ (hereinafter called TRUSTEE) with its principal office located in _____ County, Tennessee.

WITNESSETH

WHEREAS, _____ owns and operates a cemetery in _____ County, Tennessee, and is required by the public Acts of Tennessee, in what is commonly known as “The Cemetery Merchandise and Services Act of 1979”, and codified in Tennessee Code annotated 46-2-401 through 46-2-410, to maintain a trust in conjunction with funds which _____ receives for merchandise to be delivered and services to be performed under certain contracts executed between it and purchasers, and

WHEREAS, in compliance with said ACT _____ desires to establish a trust fund with the TRUSTEE and deposit with the TRUSTEE the amount, hereinbelow described, from sales contracts negotiated between it and purchasers of said merchandise and services, and

WHEREAS, any funds which may hereafter be transferred, assigned or delivered to the TRUSTEE, shall be held and administered exclusively in accordance with the terms and provisions of the “Cemetery Merchandise and Services Act of 1979” and the provisions hereinafter stated.

NOW, THEREFORE IN CONSIDERATION of the premises and mutual covenants herein set forth, _____ and TRUSTEE hereby agree as follows:

I

PURPOSE OF TRUST

The purpose of this trust is to create, establish and maintain a trust fund on behalf of _____ a cemetery in _____ County, Tennessee, said fund to represent deposits made by it with the TRUSTEE, the amount of such deposits to equal the procurement cost of merchandise and services identified in sales contracts with purchasers plus an additional twenty percent (20%) of such cost. If the sale contracts provide for installment or deferred basis payments, _____ is to be permitted, at its option, to pay into the trust account the prorated portion relating to procurement costs of each installment or deferred payment received or to pay one hundred twenty percent (120%) of the procurement costs computed as of the day of the sale.

The net income from this trust shall be paid by the TRUSTEE to _____ annually as of the end of each calendar year, provided that _____ certified to the TRUSTEE each year the current procurement costs as of January 1 of the current year of all merchandise and services and the amount held in trust equals one hundred twenty percent (120%) of current procurement costs after disbursement of the excess earnings for which deposits are held in trust. _____ must exercise its option by delivering to the TRUSTEE a written certification of current procurement costs as of the current January 1 determined and verified as provided by law in order to be entitled to receive the net trust income for such year as herein provided.

The principal of the trust fund shall remain intact until delivery of the merchandise is made and/or the services performed as specified in the sales contracts. Upon complete performance of the service and/or delivery of the merchandise specified in the sales contract, _____ shall certify the same to the TRUSTEE by affidavit. And upon the receipt of such certification, the amount of specific funds in the trust account, after payment of all appropriate TRUSTEE fees, commissions and other expenses, with respect to the delivered merchandise and/or the performed services specified in the contract shall be paid to _____. The TRUSTEE may rely upon all such proper certifications herein required to be made and shall not be liable to anyone for such reliance.

Any specified funds held on behalf of a purchaser which has been dormant for period of seventy-five (75) years since the time of deposit or last withdrawal against such monies, any be considered to be closed and such principal amount may be paid by the TRUSTEE to _____ improvement care trust.

II

DEPOSITS

Not later than sixty (60) days after payment is made by the purchaser of said merchandise or services to _____, _____ shall deposit with the TRUSTEE an amount equal to the procurement costs of the merchandise and services identified in the sale contract plus twenty percent (20%) of such costs.

If _____ enters into a contract for the sale of merchandise or services that provided for delivery thereof within sixty (60) days, and _____ fails inexcusably to deliver such merchandise or services within one hundred twenty (120) days after the receipt of any payment under such contract, _____ shall deposit to a merchandise and services trust account (or a preneed trust account established pursuant to § 46-2-3) all moneys received under the contract.

Funds deposited in the trust account by _____ shall be identified or earmarked by contract numbers and the name of the purchaser.

However the TRUSTEE may commingle the deposits in any trust fund for the purposes of the management thereof or the investment of funds therein.

The trust funds, including the income therefrom, after payment of all the appropriate TRUSTEE fees, commissions, cost and other expenses, shall remain intact, until the merchandise is delivered or the services performed as specified in the sales contract or the other agreement between _____ and the Purchases or Purchasers.

III

INVESTMENTS BY TRUSTEE

In investing the funds deposited in this trust, the TRUSTEE shall exercise the judgment and care under the circumstances then prevailing which men or prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the

probably income and capital appreciation's well as the probably safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions or limitation contained in any particular trust instrument, the TRUSTEE is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically included, but not by way of limitation, corporated obligations of every kind, stocks, preferred or common, and common trust funds of _____, which men of prudence, discretion and intelligence acquire for their own account.

IV

DEFAULT OF PURCHASES

In the event the purchases should be in default in making payments under sales contract for a period of twelve (12) consecutive months, _____ shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidated damages. In such event, the TRUSTEE shall deliver such balance to _____ upon its certification of such default by the purchaser and upon receiving the certification; the TRUSTEE may rely thereon and shall not be liable to anyone for such reliance.

The TRUSTEE is specifically authorized to commingle the deposits in this trust with any other trust fund for the purposes of the management thereof or the investment of the funds therein. The TRUSTEE shall have the power to decide all questions as to what constitutes income or principal, without regard to local law; to determine whether premiums and discounts on investments shall be charged against or credited to income or principal or apportioned between them; and to hold bonds or other securities in bearer form and to hold securities in the name of a nominee.

V

DUTIES OF TRUSTEE

In addition to any duties now or hereafter conferred by law affecting the trust fund, the TRUSTEE shall:

- a) Maintain a complete record of the amounts deposited by _____, of all investments made by trustee and the earnings thereon, and a full accounting of all disbursements made by the TRUSTEE from this trust fund;

- b) Furnish annually, as required by law, to the Commissioner of Commerce and Insurance of the State of Tennessee a financial report with respect to the trust fund on forms which shall be obtained from the Commissioner, with a copy to _____.
- c) File all tax returns, and pay any taxes, both State and Federal, required of it by law, and to do and perform any and all other acts necessary of incidental to the maintenance of the trust fund in a manner provided by law.

VI

TRUSTEE'S COMPENSATION

The TRUSTEE shall be entitled to receive a reasonable compensation for its services to be rendered under this agreement. In the event that _____ and the TRUSTEE cannot agree upon a reasonable fee to be charged by the TRUSTEE, _____ shall have the right to remove the TRUSTEE.

VII

IRREVOCABILITY OF TRUST

_____ may change the TRUSTEE to a bank having trust powers organized under the laws of the State of Tennessee or a national bank having trust powers and doing business in the State of Tennessee, and provided that _____ shall have the right to amend this Agreement from time to time, the amendments to be subject only to the statutes of the State of Tennessee governing cemeteries, as well as other applicable law.

VIII

SUCCESSOR TRUSTEE

_____ may discharge the TRUSTEE by giving written notice to it thirty (30) days before such discharge shall take effect.

The TRUSTEE, or any successor TRUSTEE, may resign or discharge itself from this trust by giving written notice to _____ thirty (30) days before such resignation shall take effect, which may be accepted prior to the expiration of such period; provided, however, that such written notice shall be accompanied by a complete and satisfactory account of the quantity, value, character, status and condition of the trust

fund at that time. This provision shall not relieve the TRUSTEE from any liability for mismanagement of the trust fund which would otherwise be imposed by law, and upon resignation the TRUSTEE shall transfer to the successor designated by _____ all if the properties then held in the trust fund, and such successor TRUSTEE shall thereupon succeed to all the rights, powers and trusts and assume all the obligation provided hereunder.

IX

ACCEPTANCE OF TRUSTS

The TRUSTEE hereby acknowledges receipt of the funds and assets and the trust herein created and agrees to hold, manage and invest the principal and funds of the trust to be designated as _____ PRENEED MERCHANDISE AND SERVICES TRUST FUND and to distribute the income therefrom in accordance with this agreement with this agreement and as required by law and to hereafter receive and accept additional funds and properties deposited by _____.

X

CONSTRUCTION

This trust agreement shall be construed and governed in all respects by laws of the State of Tennessee and shall be amended, if necessary, to comply with any subsequent amendments thereto.

IN WITNESS WHEREOF, this trust agreement has been executed on behalf of the parties hereto by their duly authorized officers at _____, Tennessee on this the ____ day of _____, 20____.

BY:

PRESIDENT

BANK

BY:

TRUST OFFICER